



# **MEDICAL EXAMINING BOARD**



**DIVISION OF LEGAL SERVICES AND COMPLIANCE**

**ANNUAL REPORT**

**(January 1, 2016 – December 31, 2016)**

The Wisconsin Department of Safety and Professional Services (DSPS), Division of Legal Services and Compliance (DLSC) provides legal services to professional boards, regulated industries and the Department regarding the investigation and prosecution/discipline of licensed credential holders for violations of statutes and administrative rules.

DLSC is comprised of complaint intake staff, consumer protection investigators, regulatory specialists, paralegals, attorneys/prosecutors, board counsel, and management staff. The DLSC team of professionals is responsible for the complaint intake process, monitoring compliance with disciplinary orders, administering a confidential program for impaired professionals, called the Professional Assistance Procedure (PAP), performing audits of trust accounts, and conducting business inspections for pharmacies, drug distributors and manufacturers, funeral establishments, and barber and cosmetology schools and establishments.

The Medical Examining Board (MEB) is charged with ensuring competent practice of licensed medical professionals in the state of Wisconsin. It enlists the services of DLSC to accomplish this purpose. The MEB relies on DLSC to provide investigation and legal services for complaints of unprofessional conduct filed against these licensees. As part of these services, DLSC provides a Medical and Affiliates Team comprised of the staff identified below. The following briefly summarizes the responsibilities of these positions:

- **Attorneys (Prosecutors)** Legal experts that perform specialized legal services relating to one or more areas of law. Prepare pleadings, briefs, orders and all types of legal documents and memorandums. Prepare findings of fact and conclusions of law, and negotiates orders. Issues subpoenas requiring appearance of witnesses and the production of documents. Represents the MEB at formal hearings of varied complexity about the administration of state laws and regulations.
- **Board Counsel** Provide legal guidance to boards and agency staff on a wide variety of issues such as a board's authority and jurisdiction with respect to legal review of disciplinary matters; assist with legal issues related to credentialing, interpreting statutes and administrative rules affecting the Board; and prepare for and attend board meetings to present legal analysis and give advice. Board Counsel also drafts, reviews and approves a variety of documents necessary to carry out board business. Finally, Board Counsel represents the boards in hearings before administrative law judges concerning application denials.
- **Complaint Intake Staff** Review and evaluate incoming complaints and request information; process the opening and/or closing of cases; monitor complaints in the initial review process. Also performs other administrative and program-related support to DLSC.
- **Consumer Protection Investigators and Consumer Protection Investigators Advanced** Plan, develop and conduct comprehensive investigations involving compliance with, or violations of, a wide range of statutes, rules, regulations, and/or standards.
- **Management Staff** Manage subordinates and programs within DLSC.
- **Paralegals and Paralegals Advanced** Perform a wide range and combination of professional-level, law-related activities to assist DLSC staff attorneys in the delivery of legal services; conduct specialized or complex legal research and the analysis of case law; assist attorneys at hearings; draft and prepare a variety of legal documents.
- **Regulatory Specialists and Regulatory Specialist Advanced (Monitoring and PAP)** Regulatory work in the areas of monitoring compliance with disciplinary orders and in the PAP.

In general, DLSC operates based upon a complaint-driven process, meaning the majority of compliance and disciplinary actions are the result of complaints submitted by outside sources, rather than DSPS' active search for misconduct. The complaint itself may come from a variety of sources, such as consumers and professionals who alert DSPS to the potential misconduct.

At other times, disciplinary action may be the direct result of inquiry by DSPS in conjunction with or at the request of the MEB (e.g. continuing education audits). Actions taken by the Board on such matters are the result of audits performed by DSPS.

### Screening

Once a complaint is received, it is reviewed by the MEB Screening Panel, which consists of Board members (medical professionals and public) as well as a DLSC prosecuting attorney. The MEB screening panel brings together the professional expertise of the Board in addition to the legal expertise of the DLSC staff.

The Screening Panel confers and determines, based on information provided, whether a violation(s) may have occurred. The panel may consider many factors, such as the seriousness of the allegations, the harm or threat of harm, whether the dispute is already resolved, and whether the matter is primarily a civil or private dispute. If a complaint does have merit, or requires further investigation, the case is opened for investigation.

If a complaint does not warrant further action, it is closed at screening and a letter is sent out to the parties. For example, the panel may close a complaint when it is determined that no violation has occurred or if there is a lack of jurisdiction over the matter.

### Investigation

When a case is opened for investigation, a case advisor will be assigned, along with a DLSC investigator, paralegal and attorney. After the investigation, DLSC staff will submit findings of the investigation to the case advisor. If the evidence is insufficient to prove a violation or there are other legal reasons not to pursue prosecution, the case advisor and the DLSC prosecuting attorney will determine the specific basis for closing the case.

### Legal Action

If the investigation finds that a violation has occurred, the case advisor and DLSC staff will consider options available to resolve the matter. In some circumstances, the matter may be resolved through non-disciplinary action such as an administrative warning or remedial education. However, if the licensee's misconduct cannot be corrected with a non-disciplinary option, or if the misconduct is common enough that all licensees within the profession must be alerted to its substandard nature, formal discipline may be warranted.

When formal discipline is warranted, the case advisor and DLSC legal staff will determine appropriate discipline and make specific recommendations to the MEB for case resolution. Disciplinary action may be agreed to by the licensee in a stipulation, or, if an agreement cannot be reached, discipline may be pursued through the formal hearing process.

Disciplinary options available to the MEB include:

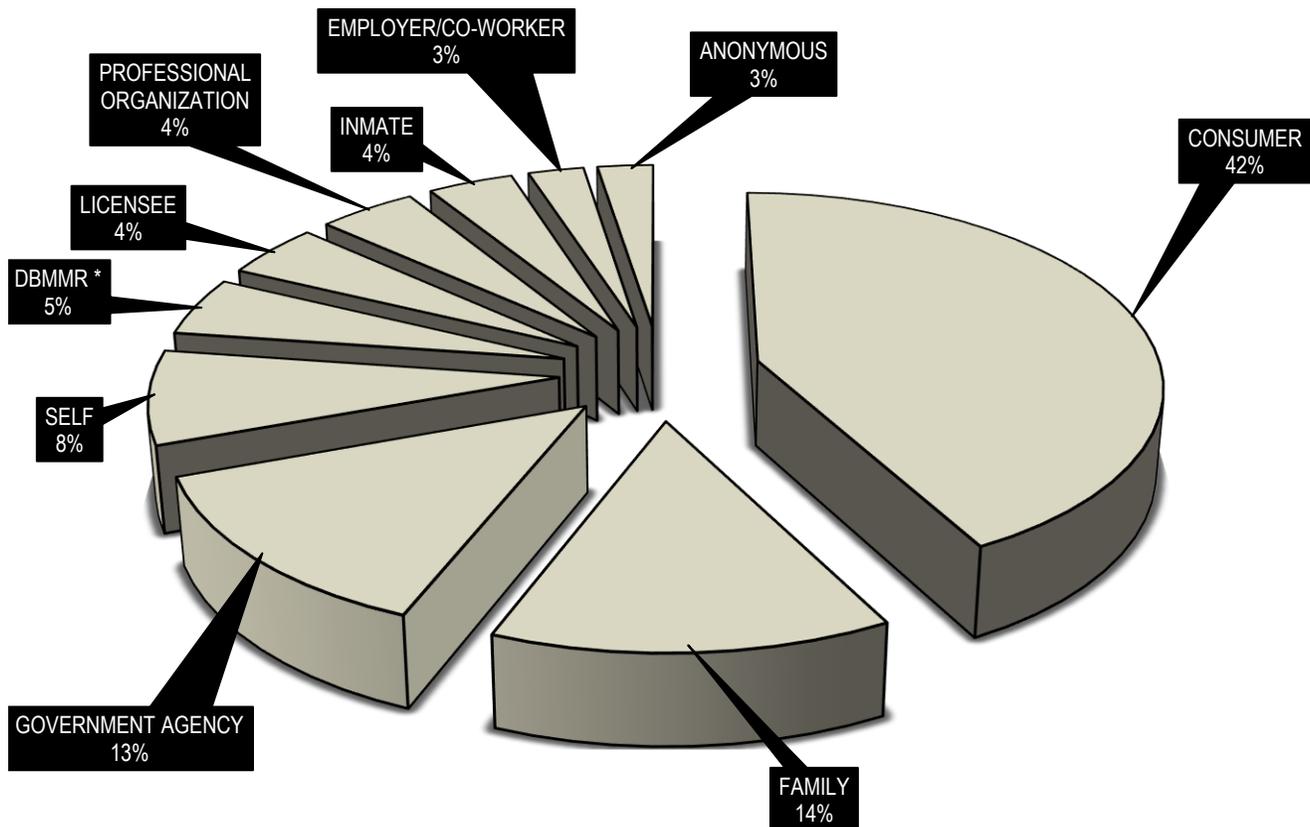
- **Reprimand** – A public warning of the licensee for a violation.
- **Limitation of License** – Imposes conditions and requirements upon the licensee and/or restrictions on the scope of the practice.
- **Suspension** – Completely and absolutely withdraws and withholds for a period of time all rights, privileges and authority previously conferred by the credential.
- **Revocation** – To completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

These types of actions are reported to the National Practitioner Databank, commonly known as the NPDB, so that other states and jurisdictions may be alerted to the action taken by the Wisconsin MEB against the physician or licensee.

## SOURCES OF COMPLAINTS RECEIVED

Data from January 1, 2016 to December 31, 2016

The MEB received **486** complaints in 2016. There are multiple ways in which the MEB may receive a complaint. Below is a graphical representation of the sources of the complaints received in 2016. It is important to note that a complaint may be received in one year however, due to the nature or course of the investigation, may not be resolved until the subsequent year(s). Also, a complaint may have more than one source.



\* DBMMR – Data Bank Medical Malpractice Report

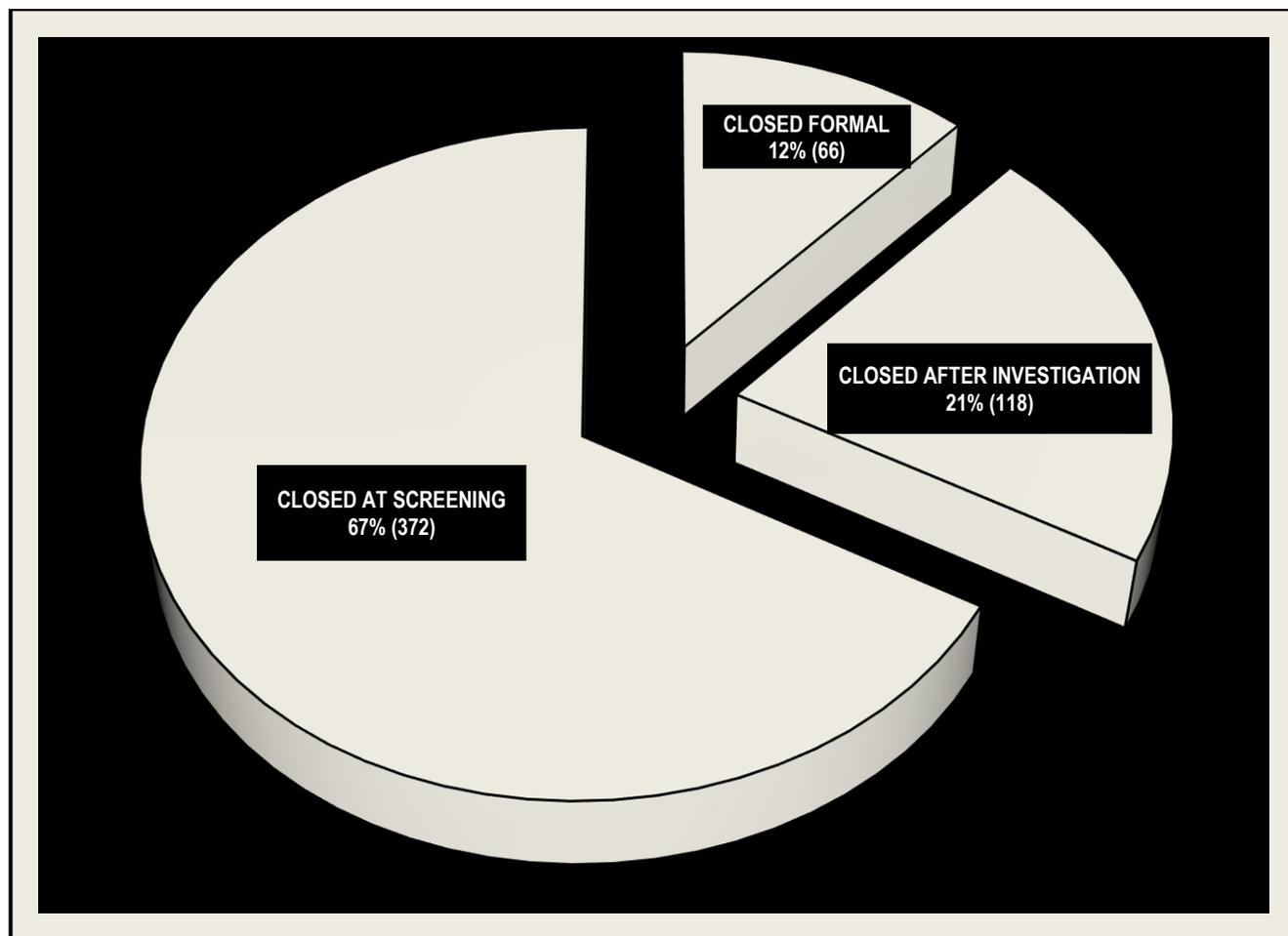
## WHEN ARE COMPLAINTS OR CASES CLOSED?

Data from January 1, 2016 to December 31, 2016

Complaints/cases may be closed in the following ways:

- At screening if the MEB screening panel determines that an investigation is not warranted.
- After investigation if the case advisor, in conjunction with DLSC professionals, determines that the matter does not warrant professional discipline.
- After the board issues a formal disciplinary order.

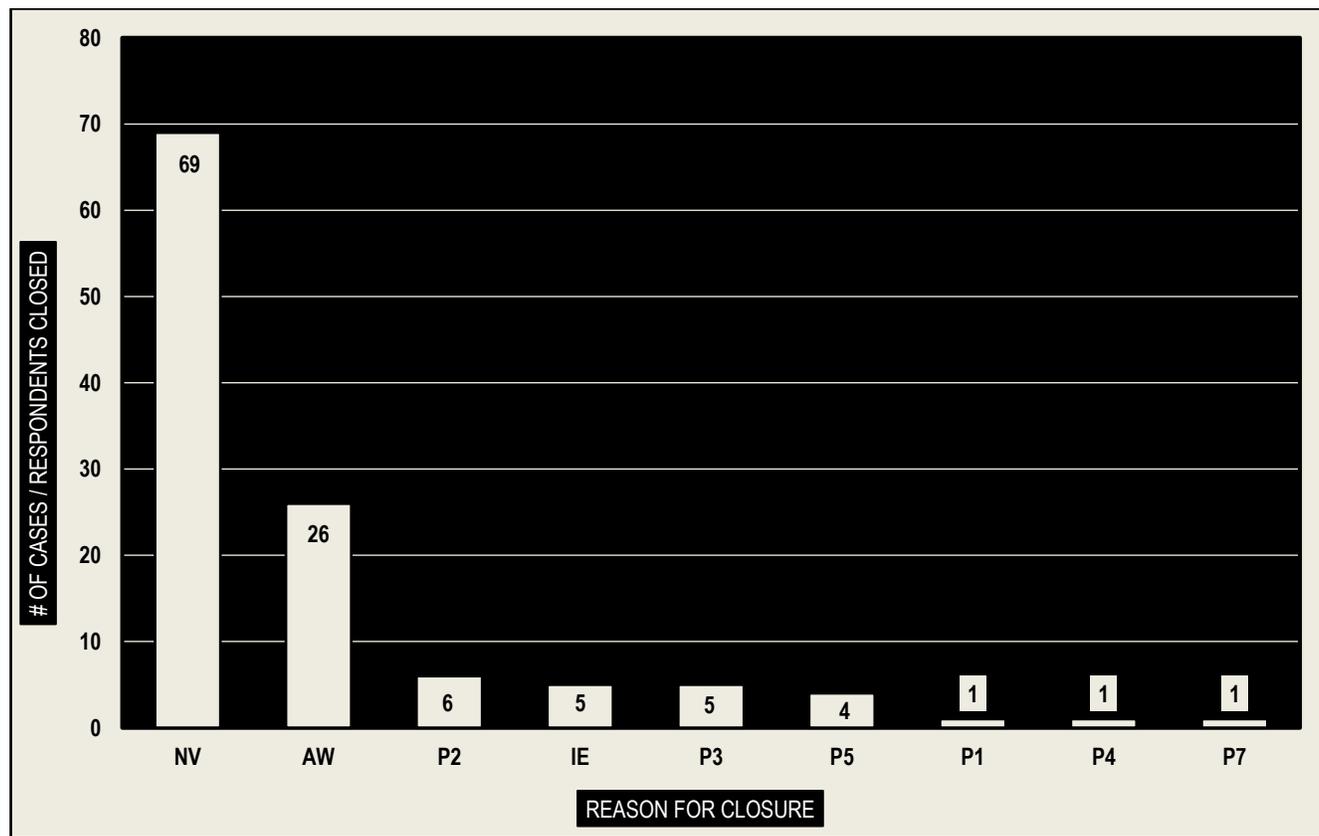
\* The following is a graphical representation of how complaints or cases/respondents were closed in 2016. It is important to note that cases closed in 2016 may have been received in previous years.



## CASES/RESPONDENTS CLOSED AFTER INVESTIGATION

Data from January 1, 2016 to December 31, 2016

**118** cases/respondents were closed after investigation (without formal discipline). There are many reasons a case may not warrant formal discipline. For example, a case may be closed after investigation due to insufficient evidence to prove a violation has occurred. Or, after careful review and deliberation, the MEB may exercise its discretion not to prosecute based on other considerations relating to the case. For a case to close after investigation, action must be taken by the MEB. The following summarizes the MEB cases closed after investigation, sorted by reason for closure.



- **NV - NO VIOLATION OF STATUTES OR RULES** - There is sufficient evidence to show that no violation of statutes or rules occurred.
- **AW - ADMINISTRATIVE WARNING** - There was an Administrative Warning issued to the credential holder pursuant to Wis. Stat. § 440.205. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct.
- **P2 - PROSECUTORIAL DISCRETION** - There may have been a minor or technical violation, but a decision was made not to commence formal disciplinary action on the grounds that compliance with statutes or rules has been gained.
- **IE - INSUFFICIENT EVIDENCE FOR PROSECUTION** - There is insufficient evidence to meet the standard of proof required to prove that a violation occurred.
- **P3 - PROSECUTORIAL DISCRETION** - There may have been a violation that is more than a minor or technical violation. However, it is not a violation which caused serious harm, and a determination has been made that the expenditure of resources required to pursue the violation would greatly exceed the value to the public of having the matter pursued.
- **P5 - PROSECUTORIAL DISCRETION** - There may have been a violation, but because the person or entity in question cannot be located, is no longer actively practicing or does not have a current credential to practice, a decision was made to close the case and place a "FLAG OR HOLD" on the credential in accordance with the Department's "Hold Status and Flagged Credentials" Policy. In the event that the person or entity is located, an application for renewal of the credential is received or the credential is renewed, the case may be re-opened and reconsidered.
- **P1 - PROSECUTORIAL DISCRETION** - There may have been a minor or technical violation, but a decision was made not to commence formal disciplinary action because the incident in question was not seriously harmful to the public.
- **P4 - PROSECUTORIAL DISCRETION** - The conduct of the credential holder may constitute negligence but does not constitute practice below the minimal standards of the professions.
- **P7 - PROSECUTORIAL DISCRETION** - There may have been a violation, but the regulatory authority has taken action in regard to this credential holder that addressed the conduct and further action is unnecessary.

## SUMMARY OF FINAL DECISIONS AND ORDERS ISSUED BY THE MEB

Data from January 1, 2016 to December 31, 2016

**66** cases/respondents were resolved through formal closure (board order) in 2016. Although the number may appear small, it often represents the most serious cases that require extensive resources, time and investigation.

The MEB case advisor works with DLSC legal staff to determine the most appropriate discipline based on the violation(s). Considerations in determining discipline include the historical practices of the MEB, prior violations by the licensee, the severity of the conduct (including the risk of potential harm), and the quality of evidence. Discipline is not punitive: actions taken against a license or licensee should be limited to the purposes of public protection, rehabilitation of the licensee, deterrence of the licensee and others from engaging in similar conduct.

The following table represents the types of disciplinary actions and other orders issued in 2016. Please note: The total number of disciplines/outcomes will be higher than the number of cases closed formally as an order may involve multiple discipline/outcomes.

| Final Decisions and Orders Details/Actions                       | Number    |
|--|-----------|
| Reprimand  | 30        |
| Limitation Requiring Education                                   | 16        |
| Limitation Requiring Treatment                                   | 3         |
| Limitation Requiring Reports                                     | 6         |
| Limitation Requiring Drug and/or Alcohol Screens                 | 1         |
| Limitation Restricting Practice                                  | 4         |
| Suspension   | 8         |
| Remedial Education   | 9         |
| Limitation Requiring Mentor/Supervision/Counselor                | 3         |
| Limitation Requiring Assessment/Evaluation                       | 5         |
| Revocation   | 3         |
| Limitation – Maintain Compliance with Another State/Agency Order | 4         |
| Suspension (Summary)   | 1         |
| <b>Total</b>   | <b>93</b> |

**Limitation:** Per Wis. Stat. § 440.01(1)(d), means “to impose conditions and requirements upon the holder of the credential, to restrict the scope of the holder’s practice, or both.”

**Reprimand:** Per Wis. Stat. § 440.01(1)(e), means “to publicly warn the holder of a credential.”

**Revocation:** Per Wis. Stat. § 440.01(1)(f), means “to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.”

**Suspension:** Per Wis. Stat. § 440.01(h), means “to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.” Licensee may not engage in the practice of the profession during term of suspension.

**Suspension (Summary):** Wis. Admin. Code § SPS 6.01(3) provides that summary suspension may be used when the facts establish “that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent’s license.” If summary suspension issued by Board, a formal complaint must be filed shortly thereafter, and the hearing must be held promptly, so it is critical that all evidence is ready, including expert testimony if necessary. The Respondent has the right to a Hearing to Show Cause under the provisions of Wis. Admin. Code § SPS 6.09.

**Voluntary Surrender:** A voluntary relinquishment of a credential as a means of resolving the matter.

**Remedial Education:** When an allegation arises because of a deficit in knowledge, the Board may order the Respondent to take remedial education, on specific topics, for specified numbers of credit hours. Remedial education orders are non-disciplinary orders, with no finding that a rule was violated.

## OTHER ACTIONS TAKEN

Data from January 1, 2016 to December 31, 2016

The MEB also issues other orders/action subsequent to license application or case closure. These orders include monitoring actions, dismissals, review/rehearing denials, and credentialing actions. Below is a summary of those orders.

| Other Orders / Action Issued        | Number    |
|-------------------------------------|-----------|
| Granting Full Licensure             | 20        |
| Granting Modification(s)            | 8         |
| Denying Modification(s)             | 2         |
| Fixing Costs                        | 7         |
| Denying Petition for Full Licensure | 1         |
| Surrender                           | 9         |
| Rehearing Denied                    | 1         |
| Granting Stay of Suspension         | 2         |
| <b>Total</b>                        | <b>50</b> |

## MONITORING

As part of its role in protecting the public, the MEB enlists the services of DLSC to monitor a licensee's compliance with a Final Decision and Order or Order Granting a Limited License.

Monitoring is housed within the DLSC's Administrative Unit, which consists of a regulatory specialist advanced and 3 regulatory specialists. Active monitoring requires considerable resources and action by monitoring staff to ensure compliance with orders and decisions. Examples of such requirements include recovery of costs, work reports, drug screenings, and therapy and education requirements.

### Below is a list of the types of disciplines/actions that are monitored:

- **Education**: The licensee is required to take continuing education in a specific topic (could be remedial or disciplinary).
- **Exam**: The licensee is required to take and pass an examination.
- **Impairment**: The licensee is suspended for a period (typically five years), with the possibility of a stay of suspension that allows the licensee to practice as long as the licensee remains in compliance with the Order. The licensee must undergo random drug screens, attend AA/NA meetings, enter into treatment, submit self-reports, and arrange for therapy reports and work reports.
- **Limitations**: conditions and requirements upon the holder of the credential, or restrict the scope of the holder's practice, or both.
- **Mentor**: The licensee is required to have a professional mentor who provides practice consultations and evaluations as specified by the Order.
- **Reports**: The licensee is required to have reports submitted by a third-party (therapists, supervisor, probation officer etc.).
- **Revocation**: (where costs are assessed): The licensee must return their license to the Department and is prohibited from practice in the state of Wisconsin. If the credential holder reapplies for licensure, the MEB may grant the license with or without conditions. [Some orders prohibit the licensee from seeking reinstatement/reapplying.]
- **Suspension**: A licensee is suspended from practice for a set period of time or indefinitely. Some suspensions may be stayed under specific conditions.
- **Voluntary Surrender**: (where costs are assessed): The licensee surrenders the registration and/or license. The licensee is prohibited from practice in the state of Wisconsin. If the person reapplies for licensure, the MEB may grant the license with or without conditions. [Some orders prohibit the licensee from seeking reinstatement/reapplying after surrendering.]

Currently (December 2017), **68** medical professionals are actively being monitored as a result of a disciplinary order.

## PROFESSIONAL ASSISTANCE PROCEDURE (PAP)

PAP can be an alternative to the formal disciplinary process for an impaired professional and encourages individuals to seek help for their impairment through a non-disciplinary contract. Currently (December 2017), there are 13 medical professionals enrolled in the PAP.

If an individual is released from PAP for failure to comply with the voluntary requirements of the program, the MEB's PAP Liaison and DLSC's PAP Coordinator may refer the individual to the Board for formal disciplinary action, if appropriate.

More information about this unique program designed to both protect the public and assist impaired professionals may be referenced at Wis. Admin. Code ch. SPS 7.

### Why does the MEB consider PAP an important tool?

- For most chemically dependent professionals, this is an opportunity to seek treatment without losing their professional credentials.
- PAP promotes early identification of chemically dependent professionals and encourages their rehabilitation.
- PAP offers participants an opportunity to obtain treatment for chemical dependency while ensuring that immediate action can be taken should a participant relapse or drop out of treatment. It is important to note that participation in PAP will not exempt the professional from discipline.
- PAP does not provide treatment; this program monitors participants' progress in treatment with an approved treatment provider, as well as their random drug and alcohol screens.

## MEETING STATUTORY DEADLINES

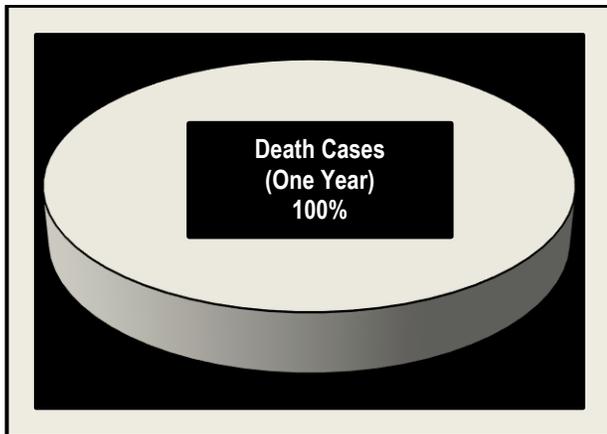
Data from January 1, 2016 to December 31, 2016

The MEB is required by Wis. Stat. § 448.02(3)(cm) to meet specific timelines for resolution of its cases. <sup>^</sup>

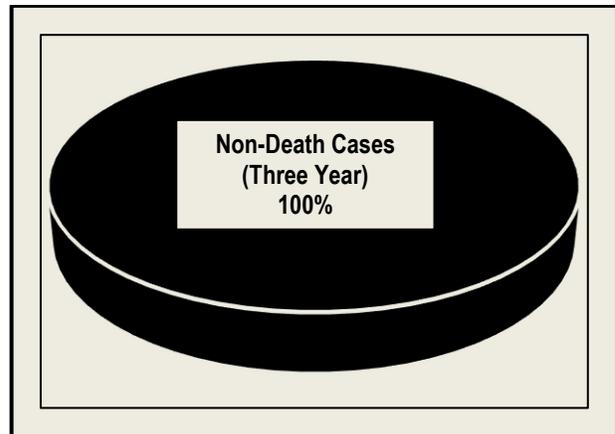
- In cases where the allegations involve the death of a patient, the MEB has one year to resolve the case.
- In all other cases, the MEB has three years to resolve the case.

Based on the analysis of the data, the charts below confirm the board's commitment to meeting the statutory timelines imposed. The MEB is proud of the work accomplished by both its members and DLSC staff in achieving **100% compliance**.

### Compliance in Cases Involving Allegations of Death



### Compliance in All Other Cases



<sup>^</sup>**Wis. Stat. § 448.02(3)(cm)** – The Board may initiate disciplinary action against a physician no later than one year after initiating an investigation of an allegation involving the death of a patient and no later than three years after initiating an investigation of any other allegation, unless the Board shows to the satisfaction of the Secretary that a specified extension of time is necessary for the Board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment.

Date initiating an investigation – Wis. Admin. Code § SPS 2.20(2) Computing Time Limits. In computing time limits under s. 448.02(3)(cm), the date of initiating an investigation shall be the date of the decision to commence an investigation of an informal complaint following the screening of the informal complaint under s. SPS 2.035, except that if the decision to commence an investigation of an informal complaint is made more than 45 days after the date of receipt of the informal complaint in the division, or if no screening of the informal complaint is conducted, the time for initiating an investigation shall commence 45 days after the date of receipt of the informal complaint in the division. The date that the Medical Examining Board initiates a disciplinary action is the date that a disciplinary proceeding is commenced under s. SPS 2.04.

## SUMMARY OF KEY STATISTICS

Data from January 1, 2016 to December 31, 2016

- Complaints Received: **486**
- Of the **486** MEB complaints received in 2016, **314 (65%)** were closed at screening.
- MEB Cases/Respondents Resolved (Closed) – (Cases may have been received in the year 2016 or prior years):
  - Respondents/cases closed formally: **66**
  - Respondents/cases closed after investigation (without a formal order): **118**  
[**26** of the **118** were **Administrative Warnings**]
  - Respondents/cases closed by the screening panel: **372**
- Most common discipline issued by the MEB: **license limitations** and **reprimands**
- Primary sources of complaints: **consumers, government agencies** and **family**
- Medical professionals currently monitored with disciplinary orders (active) as of December 2017: **68**
- Medical professionals currently enrolled in the Professional Assistance Procedure (PAP) as of December 2017: **13**
- Compliance with statutory deadlines (death and three-year cases): **100%**